

LAW OFFICE OF JAMES M. WINES

1802 Stirrup Lane | Alexandria, VA 22308
202.297.6768 | winesj@wineslegal.com
Licensed to practice in New York and DC
Not licensed in Virginia

December 5, 2017

Honorable Denise L. Cote
United States District Court
500 Pearl Street
New York, NY 10007

Re: *Securities and Exchange Commission v. Lek Securities Corp., et al.*
Case No. 17 CV 1789 (DLC)

Your Honor:

Avalon writes to advise and notify the Court of a minor factual correction to its Memorandum of Law in Support of its pending Motion to Disqualify SEC Counsel (“Memorandum” or “Memo”) (Docket Entry 116). In a meet and confer with counsel for the SEC yesterday, counsel for Avalon advised the SEC of this factual correction, and the SEC consented to the filing of this letter.

Avalon’s Memorandum (at 3) states that the SEC’s document production in this action included Avalon’s former counsel, Thomas Sporkin’s, “client interview notes that contain Mr. Sporkin’s records and impressions of [Avalon’s principal] Mr. Fayyer’s detailed accounts of facts and witnesses at issue in this case.” Avalon’s counsel had identified three such documents, each beginning with the following SEC-assigned Bates numbers: Z-006044542, Z-006134284, Z-006180408. All three documents had previously been identified by the SEC as having been attachments to parent documents that were culled as privileged during either its or the DOJ’s flawed taint procedures. The SEC has declined Avalon counsel’s requests to produce the parent emails to these privilege documents.

After filing the Memorandum, Avalon identified in its own files the parent email to the first of those three documents, beginning with Z-006044542. Contrary to Avalon’s representation in the Memorandum, which was based on both Mr. Sporkin’s and Mr. Fayyer’s initial recollection, it is now apparent that this document is not Mr. Sporkin’s notes, but rather Mr. Fayyer’s recitation of the facts discussed during his initial interview with Mr. Sporkin. Mr. Fayyer transcribed these sensitive facts related to this case at Mr. Sporkin’s instruction and in order to solicit Mr. Sporkin’s legal advice. He transmitted the privileged document to Mr. Sporkin as an attachment to a January 14, 2014 email with the subject line “Privileged – Timeline information – Nathan Fayyer/Avalon.” The parent email also stressed, “This is highly sensitive and confidential information that is for your [*i.e.* Mr. Sporkin] and [Mr. Sporkin’s associate] Heather’s eyes only.” This document is thus still privileged confidential attorney-client communications; it was simply authored by the client, not the attorney as originally reported.

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Nothing in this letter changes the analysis in Avalon's Memorandum. The document is still highly privileged, was clearly marked as such, and never should have been in the SEC's possession or produced in this litigation. That the SEC trial team had unlimited access to this document for over two years without telling anyone is sufficient basis for disqualification. The other two privileged documents discussed in the Memorandum, beginning with Z-006134284 and Z-006180408, are correctly identified as Mr. Sporkin's client interview notes. They are titled "Key Entity Descriptions" and "Roster of Key Individuals" respectively. They include Mr. Sporkin's office matter number for the Avalon matter and the footers, "Confidential & Privileged Attorney-Client Communication Attorney Work Product" and contain Mr. Sporkin's thoughts, impressions and theories of the case.

As part of its agreement with counsel for the SEC, and in light of this factual correction to its Memorandum, Avalon has stipulated to extend by three business days the SEC's time to oppose the Motion and file its Filter Attorney's brief, which shall now be due December 13, 2017, and Avalon's reply shall be due December 20, 2017.

Respectfully submitted,



James Wines
LAW OFFICE OF JAMES M WINES
1802 Stirrup Lane
Alexandria, VA 22308
202.297.6768
winesj@wineslegal.com

Counsel for Defendant Avalon FA Ltd.

Enclosure

cc: All Counsel of Record via ECF